



[4410-050P]

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 571**

[BOP-1110-P]

RIN 1120-AB10

**Compassionate Release**

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Prisons (Bureau) proposes changes to its regulations on compassionate release, including changing the title to "Reduction in Sentence in Extraordinary and Compelling Circumstances"; deleting language which indicates that the Bureau will only allow reductions in sentence for circumstances "which could not reasonably have been foreseen by the court at the time of sentencing"; and modifying and adding language to clarify the ineligibility of certain inmates for reductions in sentence and the eligibility of District of Columbia Code felony inmates (D.C. Code felony inmates) for medical and geriatric release.

**DATES:** Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, phone (202) 353-8248.

**SUPPLEMENTARY INFORMATION:**

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**SUPPLEMENTARY INFORMATION:** The Bureau published a proposed rule revising all of the regulations in 28 CFR Subpart G on December 21, 2006 (71 FR 76619). We also published an interim rule making a technical change to the regulations on February 28, 2013 (78 FR 13478). Subsequently, we published another interim rule on December 5, 2013 (78 FR 73083), which provides that the

Bureau's General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced when considering an inmate for compassionate release. It also states that the final decision is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

We now withdraw the proposed rule published in 2006 and instead propose the following changes to the regulations on compassionate release: (1) changing the title to "Reduction in Sentence in Extraordinary and Compelling Circumstances"; (2) deleting language which indicates that the Bureau will only allow reductions in sentence for circumstances "which could not reasonably have been foreseen by the court at the time of sentencing"; and (3) modifying and adding language to clarify the ineligibility of certain inmates for reductions in sentence and the eligibility of District of Columbia Code felony inmates (D.C. Code felony inmates) for medical and geriatric release.

**Changing the title to "Reduction in Sentence in Extraordinary and Compelling Circumstances."**

28 CFR Part 571, Subpart G, is currently entitled "Compassionate Release (Procedures for the Implementation of 18

U.S.C. § 3582(c)(1)(A) and 4205(g))." 28 CFR Part 572, Subpart E, is likewise entitled "Compassionate Release (Procedures for the Implementation of 4205(g))." Title 18 of the United States Code, section 3582(c)(1)(A)(i), which authorizes these regulations, does not use the term "compassionate release."

Instead, the statute states that "the court, upon motion of the Director of the Bureau of Prisons, may *reduce* the term of imprisonment. . . if it finds that - (i) extraordinary and compelling reasons warrant such a reduction . . . ."

[Emphasis added.]

Likewise, 18 U.S.C. 4205(g) also does not use the term "compassionate release," instead stating that "upon motion of the Bureau of Prisons, the court may *reduce* any minimum term to the time the defendant has served." [Emphasis added.] We are therefore proposing to change the title of subpart G to read "Reduction in Sentence in Extraordinary and Compelling Circumstances" to more accurately conform to the language of the statutes. We also propose to replace the phrase "compassionate release" with "reduction in sentence" where it appears in § 572.40.

Deleting language indicating that the Bureau will only allow reductions in sentence for circumstances "which could not reasonably have been foreseen by the court at the time of sentencing".

Section 571.60 is a statement of purpose and scope of the subpart. It describes that, "[u]nder 18 U.S.C. 4205(g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served." This regulation also states that "[u]nder 18 U.S.C. 3582(c)(1)(A), a sentencing court, on motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Control Act of 1984."

Currently, the regulation indicates that the Bureau uses these statutes "in particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing." However, neither the language regarding whether the court could reasonably foresee circumstances nor a reference to such a requirement is present in either statute. The Bureau has found it problematic and untenable to attempt to determine what the court could

reasonably have foreseen at the time of sentencing and to apply this restriction in deciding whether to seek a reduction in sentence under this subpart. For that reason, we propose to delete the phrase “which could not reasonably have been foreseen by the court at the time of sentencing” throughout the subpart.

**Clarifying ineligibility of certain inmates for reductions in sentence and eligibility of District of Columbia Code felony inmates for medical and geriatric release.**

Under section 11201 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. 105-33, 111 Stat. 71 (codified at D.C. Code § 24-101(a),(b)), the Bureau has custodial responsibility for felons sentenced pursuant to the District of Columbia Code. The Bureau also houses certain military prisoners and state prisoners in its facilities. The D.C. Code contains specific provisions that govern parole or suspension of a sentence on the basis of medical or geriatric conditions. See D.C. Code §§ 24-461 to 468. We now propose to make the following changes to clarify for inmates and the public the availability or unavailability of reductions in sentence and other forms of release to the different types of inmates in the Bureau’s facilities: (1) revising § 571.64 to include military

prisoners in that section's list of inmates ineligible for reductions in sentence under the U.S. Code; and (2) adding a new paragraph (b) to § 571.60 stating that the Bureau may seek or support medical or geriatric parole or suspension of sentence for D.C. Code inmates in its custody and making it clear that the Bureau will not seek reductions in sentence for D.C. Code inmates under the U.S. Code.

Currently, § 571.64 reads as follows: "The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of state prisoners housed in Bureau of Prisons facilities or D.C. Code offenders confined in federal institutions. The Bureau of Prisons cannot initiate such a motion on behalf of federal offenders who committed their offenses prior to November 1, 1987, and received non-parolable sentences." The current language does not mention military prisoners, who are also ineligible under these provisions. We propose to revise the language of § 571.64 to add military prisoners to its list of inmates for whom the Bureau will not seek reductions in sentence. The proposed language in § 571.64 would no longer refer to D.C. Code offenders, because we propose to add a new paragraph (b) to § 571.60 that explains separately what forms of early release the Bureau will or will not seek on



behalf of D.C. Code inmates.

By adding a new paragraph (b) to § 571.60, the Bureau would make it clear that D.C. Code inmates who committed their offense on or after August 5, 2000, may be eligible for medical or geriatric suspension of sentence as described in sections 24-467 and 24-468 of the D.C. Code. A D.C. Code inmate in Bureau custody who meets the eligibility criteria of the D.C. Code may request that the Bureau seek such a suspension of sentence for the inmate consistent with sections 24-467 and 24-468 of the D.C. Code. The procedures set out in sections 571.61 through 571.63 will apply to the submission of such requests by inmates, and to their consideration and decision by the Bureau, consistent with the provisions of the D.C. Code.

Section 571.60(b) also would make it clear that D.C. Code inmates who committed their offense before August 5, 2000, may be eligible for medical or geriatric parole as described in sections 24-461 through 24-465 and 24-467 of the D.C. Code. A D.C. Code inmate in Bureau custody who meets the eligibility criteria of the D.C. Code for such parole may request that the Bureau forward an application and documentation to the United States Parole Commission consistent with sections 24-464 and 24-465 of the D.C. Code.

Section 571.60(b) would also make it clear that the Bureau will not seek reductions in sentence under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of D.C. Code inmates. The Bureau will consider requests from such inmates only under the conditions described in the D.C. Code for medical or geriatric parole or suspension of sentence.

**Other minor changes.**

In section 571.62, Approval of request, we indicate that the "Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by" the Warden, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons. We also indicate that after obtaining the opinion of either the Medical Director (or Acting Medical Director) or the Assistant Director (or Acting Assistant Director), Correctional Programs Division, the Office of General Counsel will determine if the request warrants approval.

We propose a minor change in this section and in section 571.63 to indicate that when we refer to the General Counsel, we

refer to the Office of General Counsel, in order to indicate that multiple staff will be assigned review of the requests. We also make minor changes to indicate that either the Medical Director or the Acting Medical Director and either the Assistant Director, Correctional Programs Division, or the Acting Assistant Director, Correctional Programs Division, may act under this regulation. This will expedite processing of the requests in the event of possible absences of the Medical Director or Assistant Director.

We also propose to make another minor change to the phrase "particularly extraordinary or compelling" throughout the regulations. Under 18 U.S.C. 3582(c)(1)(A)(i), the court may, upon motion of the Director, grant a reduction in sentence if it finds that "extraordinary and compelling reasons warrant such a reduction . . . ." We therefore propose to change our phrase in these regulations to "extraordinary and compelling" instead of "particularly extraordinary or compelling" to conform to the language of the statute.

**Executive Order 12866.**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this regulation is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this regulation has been reviewed by the Office of Management and Budget.

**Executive Order 13132.**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act.**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following

reasons: This regulation pertains to the correctional management of inmates committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995.**

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996.**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

28 CFR Part 571

Prisoners.

28 CFR Part 572

Prisoners, probation and parole.

Kathleen M. Kenney  
Assistant Director/General Counsel  
Federal Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR parts 571 and 572, as follows.

**SUBCHAPTER D -- COMMUNITY PROGRAMS AND RELEASE.**

**PART 571 -- RELEASE FROM CUSTODY**

1. The authority citation for 28 CFR part 571 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568 and 3569

(Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161-4166 and 4201-4218 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031-5042; 28 U.S.C. 509 and 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1-1.10; D.C. Official Code 24-101, 24-461 through 24-468.

**SUBPART G -- REDUCTION IN SENTENCE IN EXTRAORDINARY AND COMPELLING CIRCUMSTANCES.**

2. Revise the heading of subpart G to read as set forth above.

3. In § 571.60, remove the phrase "particularly extraordinary or compelling" in the last sentence and add in its place the phrase "extraordinary and compelling", remove the phrase "which could not reasonably have been foreseen by the court at the time of sentencing", redesignate the text as paragraph (a), and add a new paragraph (b), to read as follows:

**§ 571.60 Purpose and scope**

\* \* \* \* \*

(b) The Bureau may request the sentencing court to suspend a sentence on the basis of medical or geriatric conditions on behalf of offenders in its custody who were sentenced pursuant to the D.C. Code and who are eligible under D.C. Code §§ 24-467 and 24-468. The Bureau may submit an application and accompanying documentation to the United States Parole Commission for medical or geriatric parole on behalf of offenders in its custody who were sentenced pursuant to the D.C. Code and who are eligible under D.C. Code §§ 24-461 to 24-465 and 24-467. The Bureau will not entertain requests from offenders sentenced pursuant to the D.C. Code that the Bureau file motions under 18 U.S.C. 4205(g) or 3582(c)(1)(A).

4. In § 571.61, revise the heading, revise the third sentence of paragraph (a), and remove the phrase "extraordinary or compelling" in paragraph (a)(1) and add in its place "extraordinary and compelling", and revise the second sentence of paragraph (b). The revisions read as follows:

**§ 571.61 Initiation of request—~~extraordinary and compelling~~**



**circumstances.**

(a) \* \* \* An inmate may initiate a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only when there are extraordinary and compelling circumstances. \* \* \*

\* \* \* \*

(b) \* \* \* Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the Institution where the inmate is confined.

5. In § 571.62, revise paragraph (a), paragraph (a)(2), and the second sentence of paragraph (b), to read as follows:

**§ 571.62 Approval of request.**

(a) The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the Office of General Counsel, and either the Medical Director (or Acting Medical Director) for medical referrals or the Assistant Director (or Acting Assistant Director), Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.

\* \* \* \*

(2) After obtaining the opinion of either the Medical Director (or Acting Medical Director) or the Assistant Director (or Acting Assistant Director), Correctional Programs Division, the Office of General Counsel will determine if the request warrants approval. The Office of General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced. With these opinions, the Office of General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision, subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

\* \* \* \* \*

(b) \* \* \* Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 3582(c)(1)(A), the Warden of the institution where the inmate is confined shall release the inmate either forthwith or as soon as his medical condition permits and transportation can be arranged.

\* \* \* \* \*

6. Revise § 571.63(b) and (d), to read as follows:

**§ 571.63 Denial of request.**

\* \* \* \* \*

(b) When an inmate's request is denied by the Office of General Counsel or the Director, the inmate will receive a written notice and a statement of reasons for the denial. This denial constitutes a final administrative decision.

\* \* \* \* \*

(d) Because a denial by the Office of General Counsel or Director, Bureau of Prisons, constitutes a final administrative decision, an inmate may not appeal the denial through the Administrative Remedy Procedure.

7. Revise § 571.64, to read as follows:

**§ 571.64 Ineligible offenders.**

The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of -

(a) A state prisoner housed in a Bureau facility;

(b) A federal offender, serving a non-parolable sentence, who committed his or her offense before November 1, 1987; or

(c) A military prisoner housed in a Bureau facility.

## **PART 572 - PAROLE**

8. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4205, 5015 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

### **SUBPART E -- REDUCTION IN SENTENCE (PROCEDURES FOR THE IMPLEMENTATION OF 18 U.S.C. 4205(g))**

9. Revise the heading of Subpart E to read as set forth above.

10. Revise § 572.40 to read as follows:

#### **§ 572.40 Reduction in sentence under 18 U.S.C. 4205(g) .**

18 U.S.C. 4205(g) was repealed effective November 1, 1987, but remains the controlling law for inmates whose offenses occurred prior to that date. For inmates whose offenses

occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. 3582(c)(1)(A). Procedures for reduction of sentence of an inmate under either provision are contained in 28 CFR part 571, subpart G.

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